

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS**

**WACO DIVISION**

**JOSEPH and DANIELLE PIERCE,**  
**Plaintiffs,**

**v.**

**TOLTECA ENTERPRISES, INC.**  
**d/b/a PHOENIX RECOVERY GROUP,**  
**Defendant.**

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**CIVIL ACTION NO. W-10-CA-291**

**ORDER**

Plaintiffs bring this action asserting Defendant engaged in unfair debt collection practices. They sue under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1691, et seq., the Texas Debt Collection Practices Act ("TDCPA"), Texas Finance Code § 392.001 et seq., and the Texas Deceptive Trade Practices Act ("TDTPA"), Tex. Bus. & Comm. Code, Chapter 17, Subchapter E. Plaintiffs have filed motions to strike Defendant's affirmative defenses and to dismiss Defendant's counterclaims. Having reviewed Plaintiffs' motions, Defendant's responses, Plaintiffs' reply briefs, and the pleadings, the Court is persuaded the motions should be denied at this time.

Plaintiffs assert that Defendant's affirmative defenses and counterclaims are insufficient under Rule 12(f) of the Federal Rules of civil Procedure and upon recent case authority regarding the specificity required for claims. When evaluating claims, the Court accepts as true "all well-pleaded facts" and views them in the light most

favorable to the plaintiff. See *Martin K. Eby Constr. Co. v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004). However, a party must allege specific facts, not conclusory allegations. *Elliott v. Foufas*, 867 F.2d 877, 881 (5th Cir.1989). Conclusory allegations, as well as unwarranted deductions of fact, are not admitted as true. *Guidry v. Bank of LaPlace*, 954 F.2d 278, 281 (5th Cir.1992). A party asserting a claim for relief must plead “enough facts to state a claim to relief that is *plausible* on its face.” *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 570 (2007) (emphasis added); see also *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007). “Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *In re Katrina*, 495 F.3d at 205 (quoting *Twombly*). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” *Ashcroft v. Iqbal*, at 1949.

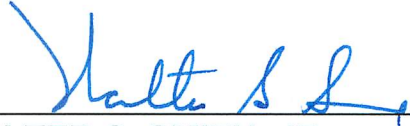
In the current case, the pleadings of both parties are insufficient to meet the specificity required by Rule 12(f). Accordingly, it is

**ORDERED** that Plaintiffs’ Motion to Dismiss Counterclaim and Motion to Strike Affirmative Defenses is **DENIED**. It is further

**ORDERED** that Plaintiffs submit and amended complaint within ten (10) days from the date of this Order that more fully states the fact in support of their claims. It is further

**ORDERED** that Defendant file an amended answer in response ten (10) days after Plaintiffs' amended complaint is filed.

**SIGNED** this 22<sup>nd</sup> day of December, 2010.

A handwritten signature in blue ink, appearing to read "Walter S. Smith, Jr.", is written over a horizontal line.

**WALTER S. SMITH, JR.**  
**United States District Judge**